Panel Decision for dispute CAC-ADREU-000370

Case number	CAC-ADREU-000370
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Domain names	kane.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	KANE INTERNATIONAL LTD

Respondent

Organization / Name	EURid

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel is not aware of any other legal procedings relating to the disputed domain name.

FACTUAL BACKGROUND

The Complainant challenges the registration of the domain name KANE by World Wrestling Entertainment Inc. based on the alleged fact that World Wrestling Entertainment Inc. is a non EU entity not fulfilling the general eligibility requirements for registration, cf. article 4.2 (b) of Regulation (EC) No. 733/2002 of the European Parliament and of the Council. Further, the Complainant criticises the Registry for not disclosing the documentary evidence pertaining to the application to the Complainant based on a request hereof given before initiating the ADR procedure.

A. COMPLAINANT

The Complainant maintains (i) that the registration by World Wrestling Entertainment Inc. of the domain name KANE is wrongful as it constitutes a contravention of the general eligibility requirements for registration, cf. article 4.2 (b) of Regulation (EC) No. 733/2002 of the European Parliament and of the Council, as World Wrestling Entertainment Inc. according to the Complainant is a non EU based entity, that the registration shall be annulled and that the domain name KANE shall be attributed to the Complainant, and (ii) that the Registry has (before the initation of the ADR procedure) wrongfully denied to disclose to the Complainant documentary evidence provided by the applicant.

B. RESPONDENT

The Respondent maintains (i) that the registration by World Wrestling Entertainment Inc. of the domain name KANE is based on a valid prior right, ie. a trade mark registered in the United Kingdom, that the applicant has duly applied and supplied evidence of of its prior right and further submitted a license declaration pertaining to the trade mark in favour of an entity fulfilling the general eligibility requirements for registration and thus that the registration is done in accordance with the Sunrise Rules, and (ii) that the Respondent when considering the Complainants request for disclosure of documentary evidence has weighted the applicants need for privacy against the Complainants need for information and found that the Complainant had access to sufficient information via the WHOIS database and therefore the documentary evidence should not be disclosed.

DISCUSSION AND FINDINGS

According to article 4.2 (b) of Regulation (EC) No. 733/2002 of the European Parliament and of the Council, the Registry shall inter alia: “register domain names in the .eu TLD … requested by any: (i) undertaking having its registered office, central administration or principal place of business within the Community, or (ii) organisation established within the Community without prejudice to the application of national law, or (iii) natural person resident within the Community”. This provision is referenced in Commission Regulation (EC) No.

874/2004, cf. article 2 - “Eligibility and general principles for registration.”, in section 1 of the .eu Domain Name Registration Terms and Conditions and further recited in the “Sunrise Rules” (.eu registration Policy and Conditions for Domain Name Applications made during the Phased Registration Period), cf. Section 1, and constitutes a basic requirement and a fundamental principle for the registration of a .eu domain name – the applicant and/or registrant must be a EU based entity within the meaning stated above. In other words – as a general principle .eu domain names are not available to entities based outside in the EU.

Even though that the Panel finds that the language used in the English language versions of the above EU regulations – and specifically in Commission Regulation (EC) No. 874/2004 - is not without ambiguity, the requirement for an applicant to be EU based is applicable in all situations and without any exceptions. Thus, this Panel holds that article 10 of Commission Regulation (EC) No. 874/2004 does not make non EU entities having prior rights eligible for the registration of .eu domain names even if article 10 in isolation may be interpreted in such a manner. This interpretation is inter alia based on the fact that Regulation (EC) No. 733/2002 of the European Parliament and of the Council does not contain any exceptions as to the general requirements of article 4.2 (b), but merely mentions the Sunrise Period in its preamble, cf. no. 16. Further, article 1, second paragraph, of Commission Regulation (EC) No. 874/2004 clearly states that chapter IV (including article 10) merely sets out an exception to the generally applicable “first-come-first-served” principle, i.e. that the holders of prior rights shall be able to register their domain names – based on these prior rights – before the general public is allowed to register domain names. Further, the Sunrise Rules themselves, cf. Section 1, support this interpretation as do Section 1, Section 12, 1 (ii) and Annex 1 of the .eu Domain Name Registration Policy.

From the Sunrise Rules, cf. Section 3, (i) and (ii) it further follows, that an applicant in its application shall state its full name and the “address and country within the Community”, (i) where the registered office, central administration or principal place of business of the undertaking of the Applicant is located or, (ii) where the organisation of the Applicant is established or, (iii) where the Applicant resides.

The .eu Domain Name Registration Terms and Conditions, section 4, states that a Registrant shall warrant that: “1. it meets one of the General Eligibility Criteria, and it shall inform, via its Registrar, the Registry when it ceases to meet such conditions; 2. all information provided to the Registry during the Domain Name registration is true, complete and accurate”.

Thus, when deciding on whether to allow an application or not, the Registry shall be entitled to rely solely on the information given in the application and supporting documentation. This also applies for this Panel.

In the case under consideration, the Applicant’s full name is indicated in the application as “World Wrestling Entertainment Inc.” and the address indicated is “26-28 Hammersmith Grove, W6 7BA London, United Kingdom”. The application pertains to the domain name “KANE.eu” and is based on a prior right, i.e. UK trade mark 227483 “KANE”. According to the supporting documentation supplied by the applicant pertaining to the trade mark the proprietor of the trademark is an entity identical to the applicant’s full name, cf. above, however, in the trade mark registration the address of World Wrestling Entertainment, Inc is stated as “1241 East Main Street, Stamford, Connecticut 06902, United States of America”. Further it is stated in the trademark registration that World Wrestling Entertainment, Inc is incorporated in Delware, United States of America and resident in the same country. The Applicant has further – presumably for the purpose of intending to comply with article 20 of the Sunrise Rules - supplied documentation in the form of a license declaration stating that the proprietor, i.e. World Wrestling Entertainment Inc., has licensed its trademark “Kane”, cf. above, to “World Wrestling Entertainment (International) Ltd.” residing at the London address indicated above.

Thus, it appears that the Applicant stated in the application is an entity (World Wrestling Entertainment Inc.) incorporated and residing in the United States and one not having its registered office, central administration or principal place of business within the Community as required by article 4.2 (b) of Regulation (EC) No. 733/2002 of the European Parliament and of the Council. This assumption is in the view of this Panel confirmed beyond any reasonable doubt by the information found by the Panel (conducting its own investigations cf. article 7 (a) of the ADR Rules) on the Applicant’s web site, e.g. http://corporate.wwe.com/company/overview.jsp, http://corporate.wwe.com/company/board.jsp and http://corporate.wwe.com/company/contacts.jsp, wherefrom it inter alia may be derived, that World Wrestling Entertainment Inc. is listed on the New York Stock Exchange, that its directors appear to be United States nationals only and that it has offices (apart from its headquarter at the Stamford address above) in New York, Los Angeles, London and Toronto. Based on this, it is concluded that the Applicant is an entity based and having its principal business in the United States and not – as required by the general eligibility criteria, cf. above – an EU based entity. This is further supported by the fact, that the entity based at the London address is not World Wrestling Entertainment Inc. but World Wrestling Entertainment (International) Ltd. as stated in the license declaration.

Thus, the decision of the Registry to allow the registration of KANE.eu by World Wrestling Entertainment Inc. conflicts with article 4.2 (b) of Regulation (EC) No. 733/2002 of the European Parliament and of the Council.

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The Complainant has as a matter of principle remarked that the Registry has not in the eyes of the complainant fulfilled its duty to provide information pertaining to World Wrestling Entertainment Inc.'s application to the Complainant prior to its initiation of the ADR procedure. While the complainant has requested no formal remedy for this and as it further may be argued whether this Panel is competent in this matter, the Panel finds reason to make the following remarks on this issue. The Registry is only entitled to provide documentary evidence to third parties if required to do so by any competent court or authority or if required by legal duty or requirement or if the Registry is acting as a respondent in a formal ADR procedure, cf. Section 9, no. 5, of the .eu Sunrise Rules and the ADR Rules, Section B1 (i). As the Complainant has provided no decision of a competent court or authority nor documented any legal requirement for the disclosure of information or documentary evidence the Panel finds no grounds for the complainant's remarks in this respect. The Registry has duly supplied the documentary evidence after the formal ADR procedure was initiated.

DECISION

For the foregoing reasons and in accordance with article 22 no. 11 of Commission Regulation (EC) No. 874/2004 and Section 11(c) of the ADR Rules the Panel orders that

the registration of KANE.eu by World Wrestling Entertainment Inc. shall be annulled and the domain name KANE.eu be attributed to the Complainant – being the next applicant in line for the registration of KANE.eu - subject to its compliance with the general eligibility criteria set out in article 4.2 (b) of Regulation (EC) No. 733/2002 of the European Parliament and of the Council.

PANELISTS

Name	Kim Hansen

DATE OF PANEL DECISION 2006-06-16

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant contested the registration of the domain name KANE.eu by World Wrestling Entertainment Inc. based on the alleged fact that World Wrestling Entertainment Inc. did not meet the general eligibility requirements for registration, cf. article 4.2 (b) of Regulation (EC) No. 733/2002 of the European Parliament and of the Council, as World Wrestling Entertainment Inc. is an entity based outside the EU.

Having performed it's own investigations, the Panel held that beyond reasonable doubt the Applicant, World Wrestling Entertainment Inc. is a non EU based entity and the as such not eligible for the registration of a .eu domain name as it is a prerequiste for any registration of a .eu domain name that the applicant is EU based, cf. article 4.2 (b) of Regulation (EC) No. 733/2002 of the European Parliament and of the Council. The registration was annulled and the domain name attributted to the Complainant, subject to its compliance with the general eligibility requirements for registration.